REMARKS

Favorable reconsideration of the above-identified application, in light of the present amendment and in view of the following comments, is respectfully requested. Claims 1, 9, and 14 have been amended. Claims 1-9 and 14 are currently pending.

On page 2 of the Office Action, claims 1, 2, 8, 9, and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 5,943,480 (Neidhardt).

Applicants respectfully submit that independent claims 1, 8, 9, and 14 are not anticipated by Neidhardt, as Neidhardt fails to teach or suggest each and every element of the claims. For example, Neidhardt fails to teach, "judging, if the detected change of the communication data size of the connection decreases below a predetermined portion of the recorded maximum size value, that said server is under a high load," as is recited in claim 1 of the present application.

On page 3 of the Office Action, the Examiner alleged that Neidhardt teaches the judging operation of the present invention. In particular, the Examiner states, "the population estimates uniformly increasing after a buffer overflow is the condition where the queue and window size have reached their maximum and subsequently the window size is decrease from that maximum. Both are indicative of the server being under high load." *See* Office Action, page 3 [sic].

Applicants respectfully submit that in the present invention, if the communication data size of a connection decreases below a predetermined proportion of a recorded value, the server is judged to be under a high load. Therefore, in the present invention, a *reduction* in the communication data size of a connection indicates that the server is under high load. In direct contrast, in Neidhardt, the overflowing of a queue, that is, an *increase* in queue size, indicates that the particular resource is operating beyond its capacity. *See* Neidhardt, column 4, lines 9-15. Although Neidhardt discloses a reduction in window size, as the Examiner indicates, the reduction in window size is simply *a result of* the overflowing of the queue, not an indication that the queue is overflowing.

Therefore, independent claims 1, 8, 9, and 14 (claims 8, 9, and 14 recite language similar to that of independent claim 1, in relevant part) are patentable over Neidhardt, as Neidhardt fails to teach, "judging, if the detected change of the communication data size of the connection decreases below a predetermined proportion of the recorded maximum size value, that said server is under a high load," as recited by claim 1, for example, of the present invention.

As dependent claim 2 depends from independent claim 1, dependent claim 2 is patentable over Neidhardt for at least the reason presented for independent claim 1.

On page 5 of the Office Action, claims 3 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Neidhardt in view of U.S. Patent No. 5,400,329 (Tokura).

Applicants respectfully submit that Tokura anticipates congestion based on a transfer rate. Therefore, Tokura does not judge that a server is under a high load if a detected change of a communication data size of a connection decreases below a predetermined proportion of a recorded maximum size value, as in the present invention.

Hence, dependent claims 3 and 5, via independent claim 1, are patentable over Neidhardt in view of Tokura, as neither Neidhardt nor Tokura, taken alone or in combination, teaches or suggests the above-identified feature of claims 3 and 5, via claim 1.

On page 7 of the Office Action, claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Neidhardt in view of U.S. Pat. No. 6,104,717 (Coile).

Coile merely describes a situation in which a machine becomes incapable of responding to an incoming request. According to Coile, a client attempting to use a connection assigned to the machine will continue to attempt to resend its request until a specified number of resends are sent. When the specified number is reached, the director "ditches" the connection. Therefore, Coile simply ditches a connection and does not perform the above-identified operation of the present invention.

Therefore, dependent claim 4, via independent claim 1, is patentable over Neidhardt in view of Coile, as neither Neidhardt nor Coile, taken alone or in combination, teaches or suggests the above-identified feature of independent claim 1 of the present invention.

On pages 8-10 of the Office Action, claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Neidhardt in view of U.S. Patent No. 6,219,712 (Mann).

Mann clearly states that a rate value is used to determine whether its network interface has become congested. If congestion is detected, the node decreases the rate value. Therefore, in Mann, in contrast to the present invention, a rate value is utilized to determine congestion. Mann does not judge that a server is under a high load if a detected change of a communication data size of a connection decreases below a predetermined proportion of a recorded maximum size value, as in the present invention.

There being no further outstanding objections or rejections, it is respectfully submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of the current Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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